IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY FIRST DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO.11609 of 2004

Between:

T. Md. Haneef, S/o.T.Md, Khasim, 37 years, Conductor,
E.No. 403997, R/o. 9/54, Patanpeta, Nandyal, Kurnool District.

...PETITIONER

AND

1. The A.P.State Road Transport Corporation, rep.by its Managing Director, Musheerabad, Hyderabad.
2. The Regional Manager, A.P.State Road Transport Corporation, Kurnool.
3. The Divisional Manager, A.P.State Road Transport Corporation, Nandyal Division, Kurnool District.
4. The Depot Manager, A.P.S.R.T.C., Tandur, Rangareddy District.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the proceedings No. PA/19(194)/02-DVM-NDL dated 08.01.2003 issued by the 3rd Respondent in so far not granting the relief of reinstatement with continuity of service, attendant benefits, back wages and further confirmed by the 2nd Respondent by his Proceedings dated 29.01.2003 as arbitrary, illegal, perverse, discriminatory, violative of Principles of Natural Justice and

violative of Articles 14 and 21 of the constitution of India and consequently set-aside the proceedings of the 2nd and 3rd Respondents by granting the relief of reinstatement with all consequential benefits.

Counsel for the Petitioner: MR.P.SRIDHAR RAO

Counsel for the Respondents: MR.P.VINAYAKA SWAMY

The Court made the following:

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO.11609 of 2004

ORDER:

Heard Sri P.Sridhar Rao, the learned counsel appearing for the petitioner and Sri P.Vinayaka Swamy, the learned Standing Counsel appearing for the respondent-Corporation.

The petitioner herein, who was working as a conductor with the respondent-Corporation, filed this Writ Petition, *inter alia*, seeking a writ of mandamus declaring the impugned proceedings

No.PA/19 (194)/02-DVM-NDL dated 08.01.2003 issued by the third respondent herein in not granting a comprehensive relief of reinstatement with continuity of service, attendant benefits, back wages etc., and further confirmation proceedings of the second respondent dated 29.01.2003 as illegal and bad.

The case of the petitioner, in brief, is that he was initially appointed as a conductor in the year 1989 and subsequently his services were regularized with effect from

01.08.1990. While he was working in the capacity as a conductor and conducting a bus on 17.05.2002, a check was made and having found certain irregularities, following the procedure of giving notice and taking explanation from the petitioner, he was removed from service on 18.10.2002. On appeal, the appellate authority, after considering the entire facts and circumstances, passed an order on 06.11.2002 with a direction to appoint the petitioner as a Casual Conductor on daily wage basis by following the due procedure under usual terms and conditions. Against the said order dated 06.11.2002, a review was preferred and the same was confirmed on 29.01.2003. Hence, the Writ Petition.

The learned counsel appearing for the petitioner submitted that having given a finding that the petitioner has put in 12 years of long service in the institution on regular side with unblemished record, the authorities ought not to have given employment as a Casual Conductor but ought to have reinstated him with all attendant benefits and back wages etc. In support, the learned counsel for the petitioner seeks to place reliance on the Circular No.46/1996 dated 10.04.1996 issued by the first respondent, where under it was contemplated for giving fresh appointment of the removed conductors or drivers in a particular manner.

The learned Standing Counsel appearing on behalf of the respondent-Corporation submits that the said circular has absolutely no application to the facts of this case or the situation as arisen and therefore, the petitioner was not given any relief of reinstatement. However, the authorities having already exercised their discretion at the stage of punishment, it is not open for this Court to go into the merits.

On considering the submissions made and on perusal of the material available on

record, the question which arises for consideration is as to whether under the facts and circumstances, the

authorities were right in restricting the punishment only to the appointment of the petitioner as a Casual Conductor instead of reinstatement with all attendant benefits, back wages etc.

There is no dispute with regard to the fact that the petitioner is in regular service with the respondent-Corporation all along and at the time of conducting the bus, a check was made and having found irregularities, disciplinary proceedings were initiated and ultimately he was removed from service on 18.10.2002. The allegations and the charges as framed against the petitioner were in respect of failing to account for certain tickets to a batch of five passengers and also wrongly punching certain tickets. Therefore, by taking into account the allegations, keeping in view the long service being put in by the petitioner, the authorities thought it fit, and exercised the discretion by appointing him as a Casual Conductor instead of confirming the order of termination, without any other benefits as sought for. Though the learned counsel for the petitioner sought to place reliance on the aforesaid circular, however, on the face of it, it appears that it will not have a bearing on the situation at a time where the authorities have exercised their discretion in initiating disciplinary action against the petitioner. At the most, the said circular can be applicable on the establishment side where an appeal or review of an order of fresh appointment is made. Therefore, it cannot be said that the petitioner has a right and can seek reinstatement with all such benefits in pursuance of the said circular. Further in the gray area, where the disciplinary authority exercised the discretion in regard to the quantum of

punishment, necessarily the same has a direct nexus and correlation to the gravity of the allegations as made against the individual.

Be that as it may, taking into consideration the long service of the petitioner and the fact that his mother was ill, he might be in a disturbed condition at the relevant point of time, the authorities have exercised their discretion and given him appointment as a Casual Conductor. No doubt having given a finding, no other reason was given to show as to why the petitioner should not be reinstated by denying all other benefits. By placing reliance on the very same reasons on which the petitioner was given employment as a Casual Conductor, the same cannot be applied to the grant of relief for reinstatement and later on confirming his appointment as a Casual Conductor. In the circumstances, it is more apt and just to order fresh appointment instead of appointing him as a Casual Conductor on daily wage basis.

The Writ Petition is accordingly allowed. The impugned orders are modified to the effect that instead of appointing him as a Casual Conductor on daily wage basis, the respondent-Corporation shall consider the petitioner's case for fresh appointment. However, he shall not be entitled to any back wages or any attendant benefits including continuity of service.

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(B.PRAKASH RAO, J)

21st March 2005

RRB

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Monday, the Twenty first day of March Two thousand and five.

ASSISTANT REGISTRAR

//True Copy//

SECTION OFFICER

Copy To:

1. The Managing Director, The A.P.State Road Transport Corporation, Musheerabad, Hyderabad.

2. The Regional Manager, A.P.State Road Transport Corporation, Kurnool.

3. The Divisional Manager, A.P.State Road Transport Corporation, Nandyal Division, Kurnool District.

4. The Depot Manager, A.P.S.R.T.C., Tandur, Rangareddy District.

5. Two CD copies.